

2013 IEERB Practitioner's Guide to Bargaining & Impasse

The Indiana Education Employment Relations Board (IEERB) is a neutral agency that oversees labor relations between public school teachers and the school employers they serve.

In 2011, Public Law 48-2011 went into effect, changing many aspects of teacher collective bargaining in Indiana. For example, there is now a bargaining timeline and mandatory impasse procedures. IEERB staff has developed this Guide to help both parties learn the basics of the law and rules, as well as navigate this new process.

The following Guide is for GUIDANCE ONLY on collective bargaining agreements and impasse under Indiana Code 20-29 (as amended by PL 48-2011) and 560 Indiana Administrative Code 2. IEERB is a neutral agency and cannot provide legal advice; nor does this Guide bind IEERB or its Board in any way. This Guide is not intended to take the place of careful review of IC 20-29 and 560 IAC 2, or as a substitute for legal advice. Some of this Guide may not be relevant to a school employer or exclusive representative based on the ratification date of a current collective bargaining agreement. Moreover, it is IEERB-only guidance. Guidance or information from other agencies involved with CBAs or collective bargaining have been provided for information only and may not reflect the views of IEERB. Please note that this Guide pertains to teacher collective bargaining laws and rules; however, the parties are still subject to other state and federal laws and rules not mentioned or analyzed here. This Guide supercedes prior IEERB guidance on bargaining and impasse.

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1

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2

Table of Contents

Collective Bargaining.....	3
Overview.....	3
Salary Scales/Models/Schedules.....	4
Collecting Information for Bargaining.....	6
Expiration of Collective Bargaining Agreements	6
Discussion	7
Miscellaneous Topics	7
Committee Appointments	7
Collective Bargaining/Discussion Meetings.....	8
Calendar-Year Collective Bargaining Agreements.....	8
Miscellaneous Issues	8
Impasse Overview	8
Impasse Steps	9
Impasse Declaration	9
Mediation	10
Overview	10
Preparing for Impasse Mediation	11
Last, Best Offers	13
Factfinding	14
Overview	14
Preparing for Impasse Factfinding.....	16
Financial Considerations.....	17
Deficit Financing.....	17
Funding Estimates and Certifications	17
Conclusion.....	18
Glossary	19
Appendix	
• Law and Rules: IC 20-29-2; IC 20-29-6; IC 20-29-8; IC 20-28-9-1; 560 IAC 2-4	
• IEERB Materials: 2013 Bargaining Timeline; 2012 LBO Requirements	
• June 2012 State Board of Accounts Collective Bargaining Agreement Rubric	
• Department of Education Salary Model & Guidance current as of the publication of this Guide	

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Collective Bargaining

Overview

Bargaining collectively is the performance of the mutual obligation of the school employer and the exclusive representative to meet at reasonable times to negotiate in good faith concerning the mandatory subjects of bargaining; and to execute a written contract, known as a collective bargaining agreement ("CBA"), relating to the settlement of bargaining subjects. The obligation to bargain collectively does not require the school employer or the exclusive representative to agree to a proposal of the other or to make a concession to the other. Informal negotiations may be held prior to August 1. However, pursuant to IC 20-29-6-12, formal collective bargaining between a school corporation and the exclusive representative shall not begin before August 1 in the first year of the state budget biennium, or August 1 in the second year of the state budget biennium if either the parties agreed to a one-year contract during the first year of the state budget biennium, or the contract provides for renegotiating certain financial items during the second year of a two-year contract.

The mandatory subjects of bargaining listed in IC 20-29-6-4 are salary, wages, and salary and wage related fringe benefits, including accident, sickness, health, dental, vision, life, disability, retirement benefits, and paid time off as permitted to be bargained under IC 20-28-9-

11. Salary and wages include the amounts of pay increases available to employees under the salary scale adopted under IC 20-28-9-1, but do not include the teacher evaluation procedures and criteria, or any components of the teacher evaluation plan, rubric, or tool. Indiana code sections 20-29-6-4.5 and -4.7 state that the following are impermissible subjects of bargaining: school calendar, teacher dismissal procedures and criteria, restructuring options available to a school employer, the school employer's ability to work with educational entities regarding postsecondary or dual credits, teacher evaluation procedures and criteria, and any subject not required to be bargained.

Prior to the start of factfinding, there is no restriction under IC 20-29 or 560 IAC 2 regarding what sources of funding may be used to settle a CBA (although there may be restrictions from other sources, including statutory or policy restrictions). However, it is unlawful for a school employer to enter into any agreement that would place the employer in a position of deficit financing. For more information, see the Financial Consideration section, below.

Beyond simply bargaining, the parties must reduce any agreement to writing. Language necessary for the formation of a collective bargaining agreement includes a ratification section, the CBA term, a recognition clause, and definitions. Additionally, a grievance procedure may be

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in a collective bargaining agreement, but may not conflict with other laws, such as IC 20-28-7.5-7(c). Pursuant to IC 20-29-6-2, a CBA cannot contain either impermissible subjects of bargaining (as set forth in IC 20-29-6-4.5(a)), or provisions that conflict with: any right or benefit established by federal or state law, school employee rights set forth in IC 20-29-4-1 and IC 20-29-4-2, school employer rights set forth in IC 20-29-4-3, restructuring options available to a

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school employer, or a school's ability to work with educational entities regarding postsecondary or dual credits. IEERS is not able to provide legal advice on CSA content or compliance. For legal advice, contact your local counsel.

Once the parties have reduced their agreements to writing, the CBA must be ratified by the governing body of the school corporation and the exclusive representative. Once it is ratified, it should be signed and posted on the school corporation's website. Ratified CBAs also must be sent to IEERS via email at ratifiedcontract@ieerb.in.gov. Any side agreements or memoranda of understanding (MOUs) regarding subjects of bargaining, as well as any prior agreements or portions of a prior agreement incorporated by reference in a CBA, must be included with the CBA submitted to IEERB. The email's subject line should include the school name, the school number, the ratified CBA, and the CBA term (e.g., Sunnyville, 1234, Ratified CBA 2013-2014); the other party's representative must be cc'd on the email. Both parties are responsible for ensuring that IEERB timely receives a ratified CBA.

Pursuant to 560 IAC 2-4-1, IEERB shall declare impasse after September 30 if either the parties notify IEERB of impasse, or the parties are, or are supposed to be under the terms of their CBA, in collective bargaining for all or part of a contract and have not submitted a ratified CBA to IEERB. To give the parties more time to bargain, IEERB is allowing the parties who notify IEERB of settlement prior to the declaration of impasse until October 10 to ratify and submit their CBA. As such, the parties should ensure that their respective governing body is able to ratify the CBA within that timeline. For more information, see the Impasse Declaration section, below.

The State Board of Accounts reviews CBAs for compliance during their biannual audits. Attached in the appendix is the Collective Bargaining Agreement rubric published by the State Board of Accounts in their June 2012 School Administrator and Uniform Compliance Guidelines. Check with State Board of Accounts for any current guidance they may have on CBAs. Note: SBOA's guidance is not binding on IEERB, and may not reflect IEERS's views.

IEERB has reviewed all 2012-2013 CBAs. Although IEERB cannot provide legal advice on how to draft a CBA or what can be contained in a CBA, IEERB encourages the parties to have the CBA reviewed in its entirety prior to ratification and submission to ensure compliance. IEERB may return CBAs if they are not signed, lack a valid term, or are incomplete (e.g., attachments or agreements referred to in the CBA are not actually attached).

See IC 20-29-6, 560 IAC 2-4, and IEERB precedent (to the extent it is still good law) for

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more information.

Salary Models/Scales/Schedules

Indiana Code 20-28-9-1 provides that increases or increments in a local salary scale must be based upon a combination of the following factors:

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**IEERB Practitioner's Guide to Bargaining &
Impasse 2013**

1. Education and experience. Specifically, a combination of
 - a. the attainment of either: additional content area degrees beyond the requirements for employment; or additional content area degrees and credit hours beyond the requirements for employment, if required under an agreement bargained under IC 20-29; and
 - b. the number of years of a teacher's experiencetaken together may account for not more than 33% of the calculation used to determine a teacher's increase or increment.
2. Evaluation. Specifically, the results of an evaluation conducted under IC 20-28-11.5.
3. Leadership. Specifically, the assignment of instructional leadership roles, including the responsibility of conducting evaluations under IC 20-28-11.5.
4. Student needs. Specifically, the academic needs of students in the school corporation.

Moreover, IC 20-28-9-1 provides that **a teacher rated ineffective or improvement necessary under IC 20-28-11.5 may not receive any raise or increment for the following year** if the teacher's employment contract is continued. The amount that would otherwise have been allocated for the salary increase of the teachers rated ineffective or improvement necessary shall be allocated for compensation of all teachers rated effective and highly effective based on the factors listed above.

The code also provides that these new salary model requirements should not be construed to require or allow a school corporation to decrease the salary of any teacher below the salary the teacher was earning on or before July 1, 2012, **if** that decrease would be solely to conform to the new salary scale. Pursuant to IC 20-28-9-1, compensation attributable to additional degrees or graduate credits earned before the effective date of the local salary schedule created under that chapter shall continue. Compensation attributable to additional degrees for which a teacher has started course work before July 1, 2011, and completed course work before September 2, 2014, also shall continue.

Pursuant to IC 20-28-9-1, each school corporation shall submit its local salary schedule to the Department of Education, who will publish the schedules on its website. DOE shall report any noncompliance to the State Board of Education, who shall take appropriate action to ensure compliance. Please check with the DOE regarding submission and compliance of salary schedules. **Note: DOE's guidance is not binding on IEERB, and may not reflect IEERB's views.**

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DOE has developed an Indiana Model Salary Schedule {Version 2.0}, which was current as of the publication of this Guide, and can be found at www.doe.in.gov/improvement/educator-effectiveness/compensation-systems. According to DOE guidelines, this model can be implemented in a school corporation without modification, modified to fit a school corporation needs, or simply used as a starting point in a corporation's process of creating an innovative salary schedule program. DOE also has published a "Compensation Guidance: Salary Scale Compliance Checklist," attached, which was current as of the publication of this Guide (and also can be found at the website listed above). Please

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5

**IEERB Practitioner's Guide to Bargaining &
Impasse 2013**

check with the DOE for any current guidelines or salary models. **Note: DOE's guidance is not binding on IEERB, and may not reflect IEERB's views.**

Additionally, although IEERB cannot provide a legal opinion about salary models, or recommend that a particular model be used, a variety of salary models, embedded within CBAs, are available through IEERB Search at: <https://ieerbsearch.ieerb.in.gov/login.aspx> (if you do not already have an account, you will need to self register for one on the website). Additionally, IEERB can provide information on the type and frequency of salary models. **Please note that IEERB's posting or information signifies neither the salary model's or CBA's compliance with applicable laws and rules, nor IEERB's endorsement of the salary model or CBA.**

Prior to ratifying and submitting salary models, particularly given the various individuals and agencies that may be reviewing them, IEERB recommends that the models are reviewed to ensure they are compliant, complete, and understandable.

For more information, see IC 20-28-9-

1. Collecting Information for Bargaining

IEERB encourages the parties to voluntarily and readily exchange bargaining information. Aside from any voluntary exchange, such disclosure may be mandatory. *Lebanon Classroom Teacher Association, Inc. v. Board of School Trustees of the Lebanon Community Schools*, Case No. U-10-13-0665, 2012 WL 3549830, at *3 (IEERB Mar. 27, 2012), provides that a party "has a right to information about mandatory subjects of bargaining for purposes of making future bargaining proposals, current bargaining proposals, or for contract administration.... Under EERB precedent, the information must be provided at any time, not just within normal bargaining periods." See IEERB precedent for more information on disclosure requirements.

Moreover, schools are subject to the Access to Public Records Act, IC 5c14-1.5 et seq., which allows all persons, including associations, access to public records from a public agency. The Public Access Counselor provides advice and assistance concerning Indiana's public access laws to members of the public and government officials and their employees. For more information on APRA, including requirements, exclusions, timelines, etc., go to www.in.gov/pac.

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Expiration of Collective Bargaining Agreements

CBAs entered into on or after April 21, 2011, may not extend past the end of a state budget biennium. Upon the expiration of the current contract that is in effect, the school employer shall continue under the terms of the current contract that is in effect, with no increase or increment in salary, wages, or benefits for any bargaining unit employee until a new contract is executed, unless continuation would put the school employer in a position of deficit financing due to a reduction in the employer's actual general fund revenue or an increase in an

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**IEERB Practitioner's Guide to Bargaining &
Impasse 2013**

employer's expenditures when the expenditures exceed the current year actual general fund revenue.

Pursuant to IC 20-29-6-16, if an agreement has not been reached on the items to be bargained collectively by November 1, as provided in IC 6-1.1-17-5, the parties shall continue the terms of the current contract that is in effect, and the school employer may issue tentative individual contracts and prepare its budget on that basis. During this period, the school employer may not unilaterally change the terms or conditions of employment that are issues in dispute.

Pursuant to IC 20-29-6-16, only certain parts of the CBA must continue. For more information, see IC 20-29-6-4.7 and IC 20-29-6-16.

Parties with CBAs that were ratified prior to April 21, 2011, may caiiiIEERB for questions regarding the expiration oftheir CBA.

Discussion

Discussion is the performance of the mutual obligation ofthe school corporation through its superintendent and the exclusive representative to meet at reasonable times to discuss, provide meaningful input, or exchange points of view, with respect to the following subjects: curriculum development and revision; textbook selection; teaching methods; hiring, evaluation, promotion, demotion, transfer, assignment, and retention of certificated employees; student discipline; expulsion or supervision of students; pupil/teacher ratio; class size or budget appropriations; safety issues for students and employees in the workplace, except those items required to be kept confidential by state or federal law; and hours. The obligation to discuss does not require either party to enter into a contract, agree to a proposal, or make a concession related to the mandatory subjects of discussion. See IC 20-29-2-7, IC 20- 29-6-6, IC 20-29-6-7, IC 20-29-6-8, and IEERB precedent (to the extent it is good law) for more information.

Miscellaneous Topics

Committee Appointments

Pursuant to IC 20-29-5-7, the percentage of teacher positions the exclusive representative may appoint to serve on a statutory or locally created school or district wide committee may not exceed the percentage of teachers in the school corporation who are members of the exclusive representative. This requirement does not apply to the bargaining team for the exclusive representative, and such a committee may not address subjects of

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7

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Collective Bargaining/Discussion Meetings

Pursuant to IC 5-14-1.5-6.5, whenever a governing body, or any person authorized to act for a governing body, meets with an employee organization; or any person authorized to act for an employee organization, for the purpose of collective bargaining or discussion, any party may inform the public of the status of collective bargaining or discussion as it progresses by release of factual information and expression of opinion based upon factual information.

Effective July 1, 2013, collective bargaining discussions that the governing body of a school corporation engages in directly with bargaining adversaries does not constitute a meeting under Indiana's Open Door Law if the governing body has not appointed a collective bargaining agent.

Calendar-Year Collective Bargaining Agreements

Parties with questions regarding calendar-year CBAs should contact IEERB's conciliation director.

Miscellaneous Issues

Pursuant to IC 20-29-6-9, the obligation to bargain collectively or discuss a matter does not prevent a school employee from petitioning the school employer, governing body, or superintendent for a redress of the employee's grievances, either individually or through the exclusive representative; or the school employer or superintendent from conferring with a citizen, taxpayer, student, school employee, or other person considering the operation of the schools and the school corporation.

Pursuant to IC 20-29-6-10, nothing shall prevent a superintendent or the superintendent's designee from making recommendations to the school employer.

Pursuant to IC 20-29-5-7(e), by September 15 of each school year, the local president or other officer or designee of the exclusive representative shall certify by affidavit to the school employer the number of teachers in each school and in the entire school corporation who are members of the exclusive representative.

Impasse Overview

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At the end of September 2013, IEERB will post and send to all parties (for whom IEERB has contact information) a Bargaining Status Form. This Form should be completed- regardless of whether the parties are bargaining- and sent to IEERB via email at impasse@ieerb.in.gov by October 5, 2013. The email should include the school name, school number, and topic in the subject line (e.g., Sunnyville, 1234, Joint Bargaining Status Form). IEERB requests the parties' cooperation in helping ensure that all parties receive the Bargaining Status Form, so IEERB asks that you send the Form to the school's superintendent or the

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**IEERB Practitioner's Guide to Bargaining &
Impasse 2013**

exclusive representative president when you either receive it or find it on IEERB's website. School employers and exclusive representatives may complete the form together, or separately. In either case, the other party's representative must be cc'd on the email submission to IEERB. The contact information on the Bargaining Status Form will be the contact information used by IEERB for the Declaration of Impasse unless notice of another or additional contact is given to IEERB.

Impasse Steps

1. Declaration of Impasse by IEERB
2. Appointment of Mediator by IEERB
3. Mediation
4. Exchange of Last, Best Offers (LBOs)
5. Appointment of Factfinder by IEERB
6. Factfinding
7. Appeal to IEERB
8. Appeal to Court

The 2013 Bargaining Timeline is attached in the

appendix. [Impasse Declaration](#)

IEERB shall declare impasse after September 30 if either the parties notify IEERB of impasse, or the parties are, or are supposed to be under the terms of their CBA, in collective bargaining for all or part of a contract and have not submitted a ratified CBA to IEERB.

Parties who are at impasse should notify IEERB on or after October 1. Parties may inform IEERB of impasse through the Bargaining Status Form, or via email at impasse@ieerb.in.gov. This notice should include the school name, school number, exclusive representative name, contact information for both parties, and the fact that the parties are at impasse (if the parties disagree whether they are at impasse, please note that as well). Either party may submit the email, but the other party's representative must be cc'd.

To give the parties more time to bargain, IEERB is allowing parties who notify IEERB of settlement prior to the declaration of impasse until October 10 to ratify and submit their

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CBA. As such, the parties should ensure that their respective governing body is able to ratify the CBA within that timeline. Notice of settlement should be made on the Bargaining Status Form. If the parties settle after they submit the Form, the parties should submit written notice of settlement to IEERB via email at impasse@ieerb.in.gov. This notice should include the school name, school number, exclusive representative name, contact information for both parties, the fact that the parties have settled, and the earliest date of ratification (which must be prior to October 10 to avoid declaration of impasse). Either party may submit the email, but the other party's representative must be cc'd.

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**IEERB Practitioner's Guide to Bargaining &
Impasse 2013**

IEERB will send a Declaration of Impasse to the contacts listed on the parties' Bargaining Status Form. Once impasse is declared, it will continue unless and until IEERB receives either a ratified CBA (at which point it will issue an End of Impasse notice) prior to the initiation of factfinding, or a factfinder's report.

Upon receipt of the Declaration of Impasse, each party is required to provide IEERB with the name, position, address, e-mail address, and phone number of its chief spokesperson, and of the individual to whom billing invoices should be submitted. Each party is required to immediately submit a change in contact information occurring during mediation or factfinding. The individual listed as the chief negotiator will be the contact throughout impasse unless notice of a change is provided to IEERB and the mediator or factfinder if the party is in mediation or factfinding. Unless otherwise indicated in these rules, all correspondence for impasse procedures shall be via e-mail. Parties or the IEERB may, in addition to e-mail, correspond via mail, facsimile, or hand delivery. Receipt of an e-mail will be presumed upon dispatch.

See 560 IAC 2-4 for more information.

Mediation

Overview

Once impasse is declared, IEERB will appoint a mediator within 15 days. Mediation is mandatory, and the cost is split by the parties. During mediation the mediator will attempt to help the parties reach a settlement, but cannot force one. If for any reason either party does not feel that mediation will be successful, the mediator should be contacted immediately so the mediator can decide how to proceed.

At no cost to the parties, IEERB provides training to its mediators on the laws and rules of teacher collective bargaining. Parties may jointly request a mediator if they wish. A list of approved ad hoc panelists can be found at <http://www.in.gov/ieerb/2337.htm>. Such a request will be taken into consideration by IEERB, but may not be granted. IEERB strives to appoint quality mediators who will best facilitate settlement. As such, IEERB has developed an evaluation system for our mediators, and depends on the parties to provide honest, detailed assessments of mediators so that we can better train and place them. Any concerns should be addressed to IEERB. Evaluations will be dispersed at the end of mediation.

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Mediation will consist of 1-3 sessions, which generally occur at the school corporation. Mediation will last up to 30 days starting from the date of the mediator's appointment. During mediation, there is no restriction under IC 20-29 or 560 IAC 2 regarding what sources of funding may be used to settle a CBA (there may be restrictions from other sources, including statutory or policy restrictions). However, it is unlawful for a school employer to enter into any agreement that would place the employer in a position of deficit financing. For more information, see the Financial Consideration section, below.

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If the parties cannot settle and ratify their CBA by the end of mediation, they must exchange LBOs. IEERB must receive a ratified CBA to end impasse. The mediator will set the dates and times of mediation sessions, the number of sessions, and when mediations ends/the parties must exchange LBOs. Prior to the first mediation, the mediator may contact the parties and request information, either orally or in writing, in order to help facilitate more efficient sessions. Parties should cooperate with the mediator's request to help the mediator understand the nature of impasse.

The mediator will inform IEERB whether the parties have settled. The mediator also will report the number of hours worked and expenses incurred during mediation. The current hourly rate for mediators is \$800/7.5. IEERB will pay the mediator, and then send the parties an invoice reflecting the shared cost. This invoice will be due 30 days from receipt. Failure to timely pay the IEERB may result in legal action. For more information on the collection process, please contact IEERB's conciliation director.

See IC 20-29-6-13 and 560 IAC 2-4 for more information.

Preparing for Impasse Mediation

Successful mediation often will require time and effort by the parties and the mediator. This time and effort can pay off in a big way- if you settle and the CBA is ratified, not only are you done with impasse, but you will not have to draft an LBO and participate in factfinding, both of which may involve significant time and money. Below is some additional information on what to expect from mediation to help you prepare.

After receiving a Declaration of Impasse from IEERB, you will receive a Mediator Appointment, which will name the appointed mediator and provide information on the process. The mediator will contact the parties to set up dates and time for mediation. Given the tight timeframe, it is important that the parties be flexible in when they can attend mediation sessions. Mediators can unilaterally set the date and time of mediation. The first session will ideally take place within 10 days of the start of mediation. Parties who fail to attend scheduled sessions will still be responsible for any time spent and costs incurred by the mediator. Knowing that a mediation session could take all day, parties should clear their schedule for the date of mediation so they can attend and fully participate until the mediator decides to end the session.

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Within the mediation period (up to 30 days), the parties must attend at least one mediation session, and may attend up to three. If the parties settle, the CBA must be ratified within the mediation period. Therefore, parties should plan for ratification when dealing with the mediation timelines. IEERB will issue an End of Impasse notice when it receives a ratified CBA.

If the parties do not settle and ratify a CBA, they will have to exchange IBOs by the date given by the mediator within the mediation period.

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**IEERB Practitioner's Guide to Bargaining &
Impasse**

2013

The mediator may require information, either via telephone or written statement, from the parties prior to the first session to give the mediator some background on the parties and their bargaining history. It is strongly recommended that the parties provide all relevant information requested by the mediator. If the mediator does not require any information prior to the first session, parties may ask the mediator if they can submit information. Receiving information prior to the first session will help the mediator devise a mediation strategy based on the particular case, and will likely lead to a quicker (and cheaper) resolution.

In addition to requesting information, the mediator also may provide information on his or her general style of mediation. For example, many mediators will start with a joint session where the parties present an opening statement and then split the parties into separate rooms for the remainder of the session. Other mediators will have no joint sessions; others will not separate the parties. The parties are encouraged to ask the mediator what the parties can expect from the first mediation session, including whether they will be asked to provide opening statements. Opening statements generally consist of concise statements regarding a party's positions on disputed issues.

Regardless of the format of mediation, the parties should be prepared to explain to the mediator and the other party their positions on the disputed issues and the support for that position. To do that, the parties will have to know and understand the basics of the law and procedures, the cost and source of funding for their proposals, and the reason their position should be adopted (an example could be explaining how your position is consistent with the factors that a factfinder, should the case go to factfinding, would take into consideration in selecting an LBO: past memoranda of agreements and contracts between the parties; comparisons of wages and hours of the employees working for other public agencies and private concerns doing comparable work, giving consideration to factors peculiar to the school corporation; the public interest; and the financial impact on the school corporation and whether any settlement will cause the school corporation to engage in deficit financing). Also, knowing- and being able to articulate- why your position is important to you may help the mediator devise creative solutions. For example, if the exclusive representative would like a stipend for teachers for meeting the academic needs of students and the school can pay it, but not immediately, the parties may agree to a delayed stipend (remember that agreements must still be compliant with other laws, such as federal and state wage payment and collection laws).

Parties may need to request information from the other side in order to be prepared for mediation. Such information should be requested as far in advance as possible to give the other party time to respond. For more information, see the section entitled Collecting Information for Bargaining, above.

Varying interests may not only be represented on opposite sides of the table, but also on the same side of the table. The mediator is there to mediate between the parties, not within the parties. As such, meeting with the team who will attend mediation for your party prior to mediation to sort through and decide on issues will help to show a unified front and ultimately may facilitate settlement.

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Impasse 2013**

The takeaway: preparing for mediation and taking it seriously will help all the parties resolve matters more quickly and efficiently. Here are some tips to help you prepare:

- Review the law, rules, and guidance provided by IEERB and your attorney.
- Request non-confidential information from the other party in advance that may help you prepare for mediation. Make your request reasonable in scope and time frame.
- Provide requested information to the other party in a timely fashion.
- Be as flexible as possible with scheduling.
- Be prepared to provide the mediator with requested information to help the mediator understand the nature of impasse prior to the start of mediation.
- Be prepared to stay at mediation for as long as it takes to settle, or for the session to become unproductive.
- Be open to creative solutions that address the interests of both parties.
- Determine which issues are contested.
- For each contested issue, determine the overall cost compared to available funds.
- For each contested issue, determine the source of the funding, and whether it will be available if the parties go to factfinding.
- For each contested issue, be sure you can articulate the reason for your position and counter any reasons against it that may be offered by the other side.

Last. Best Offers

An LBO shall be presented to the opposing party at the end of mediation if the parties have not settled and ratified a CBA. The LBO also must be submitted to IEERB electronically within two days after mediation has ended. The LBO submitted to IEERB must be identical to the LBO presented to the opposing party at the end of mediation. The LBO shall be submitted in the format required by IEERB and include all information and documents required by IEERB. Each party's LBO shall contain a signed verification stating that all information is correct and that the LBO does not place the employer in a position of deficit financing due to a reduction in the employer's actual general fund revenue or an increase in the employer's expenditures when the expenditures exceed the employer's current year actual general fund revenue. A draft verification is attached to the appendix under 2012 LBO Requirements. Additionally, an

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LBO must be based on permissible sources of funding. For more information, see the Financial Considerations section below.

Prior to October 1st of each year, IEERB will post on its website the required format, information, and documents for an LBO for that year's bargaining season. This information also will be sent to the parties with the Declaration of Impasse. **The LBO shall be submitted to IEERB via email at impasse@ieerb.in.gov.** If the large size of any supporting documentation precludes electronic delivery, the supporting documentation may be submitted to IEERB in hard copy or an electronic format within 24 hours of the submission of the LBO.

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**IEERB Practitioner's Guide to Bargaining &
Impasse 2013**

IEERB shall review the LBO to ensure that the LBO is in the required format and contains the required information and documents. The 2012 LBO Requirements are attached in the appendix to show what was required last year. **Check IEERB's website for 2013 LBO Requirements.** Failure to substantially comply with the requirements of an LBO could result in rejection of the submitted LBO and acceptance of the opposing party's LBO. If a party has substantially complied with the LBO requirements, IEERB will notify the submitting party, who will have twenty-four hours to provide the requested format, information, or documents. Failure to submit an LBO as requested by IEERB could result in rejection of the submitted LBO and acceptance of the opposing party's LBO.

Completing an LBO requires the submission of information and documents. IEERB recommends that parties collect, compile, or request this information prior to the start of mediation. If not, parties should ensure that these documents are obtained with enough time for the other party to produce them (in addition to the time it will take the requesting party to analyze and explain them in the LBO). Parties also may want to obtain information beyond what is required for the LBO in order to sufficiently explain their LBO. For more information, see the section entitled "Collecting Information for Bargaining," above.

A good LBO will not just provide the required information and documents, but also will explain the LBO's terms and effects so the factfinder, financial consultant, and potentially the Board can easily understand the LBO. As this process will take time, IEERB recommends that parties not wait until the last minute to start preparing their LBO. Moreover, such preparation may be helpful in negotiations, including at mediation.

Once you have exchanged LBOs, IEERB recommends reading and analyzing the other party's LBO not only to prepare for factfinding (explained in more detail below), but also to determine whether settlement is possible. There is no restriction in IC 20-29 or 560 IAC 2 on the parties settling and ratifying a CBA prior to the start of factfinding. Parties that do so (and submit the CBA to IEERB) will be issued an End of Impasse notice. IEERB rule 560 IAC 2-4-4(b) provides that parties settling during factfinding must submit identical LBOs to the factfinder. Each party's LBO must contain a verification statement as described above.

See 2012 LBO Requirements; IC 20-29-6-15.1; IC 20-29-8-7; and 560 IAC 2-4-3.1 for more information.

Factfinding

Overview

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If mediation is unsuccessful, IEERB will appoint a factfinder within 15 days from the end of mediation, and factfinding will commence. The purpose of fact-finding is to provide a final solution on collective bargaining whenever the parties are unable by themselves, or through a mediator, to timely settle a CBA. The parties shall split the cost. Factfinding may not last longer than 15 days from the date of the factfinder appointment. As **such, it is extremely important**

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that the parties work with the factfinder and make their schedules available for a hearing. The factfinder may unilaterally set the hearing time and date.

The factfinder may be aided in the factfinding process by a financial consultant appointed by IEERB. This consultant will have a background in finance, and aid the factfinder in the financial aspects of the parties' LBOs. The financial consultant will contact the parties through the factfinder and will not be making a separate determination or write a separate report.

At no cost to the parties, IEERB trains factfinders and financial consultants on the laws and rules of teacher collective bargaining. IEERB attempts to find a good fit between the parties and the factfinder and financial consultant based on several factors. Parties may jointly request a factfinder or financial consultant if they wish. A list of approved ad hoc panelists can be found at <http://www.in.gov/ieerb/2337.htm>. Such a request will be taken into consideration by IEERB, but may not be granted. IEERB strives to appoint quality ad hoes for the factfinding process. As such, IEERB depends on the parties to provide honest, detailed assessments of our ad hoes so that we can better train and place them. Any concerns should be addressed to IEERB. Evaluations will be dispersed at the end of factfinding.

The factfinder will conduct an investigation, which may include a public hearing, into the parties' LBOs. At the public hearing, the school corporation is responsible for providing a room for the fact-finding hearing and equipment and necessary materials for recording of the proceedings. Each party has a maximum of two hours to present in the fact-finding hearing and one hour for rebuttal. During the public hearing, each party shall present fully its LBO, including the fiscal rationale for the offer. For limitations on the sources of funding for LBOs, see the Financial Considerations section below.

The factfinder must select one party's LBO as the binding contract terms. The factfinder's order:

- 1) may be restricted to those issues the factfinder deems significant;
- 2) is restricted to only those items permitted to be bargained and included in the collective bargaining agreement;
- 3) must not put the employer in a position of deficit financing; and
- 4) may not impose terms beyond those proposed by the parties in their LBOs.

The factfinder may use evidence from the parties, the Board, the Board's staff, or any other state agency. The factfinder shall consider the following factors:

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- 1) past memoranda of agreements and contracts between the parties;
- 2) comparisons of wages and hours of the employees involved with wages of other employees working for other public agencies and private concerns doing comparable work, giving consideration to factors peculiar to the school corporation;
- 3) the public interest; and

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- 4) the financial impact on the school corporation and whether any settlement will cause the school corporation to engage in deficit financing.

The factfinder and financial consultant will submit their hours worked and expenses incurred during factfinding. The current hourly rate is \$1,200/7.5 for factfinders and \$500/7.5 for financial consultants. IEERB will pay the bills, and then submit an invoice to the parties reflecting the total split cost. The invoice will be due 30 days after receipt. Failure to timely pay IEERB may result in legal action. For more information on the collection process, please contact IEERB's conciliation director.

To obtain Board review of a fact-finding report, a request must be made by the school employer or the exclusive representative within 30 days after receipt of the report. The oral or written request must state the nature of the objection to the report. If the request is oral, a written confirmation of the request must be received by the board within two days. The appeal of a fact-finding report must be in writing, stating the specific nature of each objection to the report. Any party in opposition to the appeal may file an answering brief. Any answering brief must be filed within 10 days of service of the appeal and within 15 days of the filing of the appeal with the IEERB. No additional briefs may be filed unless requested by the board. The board will decide the matter upon the record, with or without oral argument. The appealing party must bear the cost for preparation of a hearing transcript.

Parties may appeal the Board's final order to a court of competent jurisdiction within the applicable statute of limitations.

See IC 20-29-6; IC 20-29-8; and 560 IAC 2-4 for more information.

Preparing for Impasse Factfinding

Factfinding can be a time-consuming- and costly- process. The good news is that your LBO, which had to be exchanged prior to the start of factfinding, is the basis of the factfinding process. As such, assuming that you crafted a complete LBO that is easily understood by third parties, most of the legwork will have been done by the time factfinding has started.

As the LBO will already be prepared, perhaps the biggest preparation during factfinding will be the presentation at the hearing. Not only is this a chance to explain your case more thoroughly to the factfinder, but as you may not have seen the other party's LBO

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until yours was submitted, it may be the first chance you have to rebut the other party's LBO. As such, in the presentation, you will want to focus on the reasons your LBO should be accepted, as well as explaining why the other party's LBO should not be accepted. This argument should be based on the statutory factors a factfinder must consider, and be supported by evidence to the extent possible.

The takeaway: preparing for factfinding will help your case and reduce costs. Here are some tips to help you prepare:

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**IEERB Practitioner's Guide to Bargaining &
Impasse 2013**

- Review the law, rules, and guidance provided by IEERB and your attorney.
- Read carefully and analyze the other party's LBO.
- Determine if there is a chance for settlement after reviewing the LBOs.
- Determine which issues are contested after reviewing each LBO.
- For each contested issue, determine the overall cost compared to the available revenue.
- For each contested issue, articulate the reason for your position and counter any reasons against it that will be offered by the other side.
- Be as flexible as possible with scheduling a hearing.

Financial Considerations

Deficit Financing

Deficit financing for a budget year means actual expenditures exceeding the employer's current actual general fund revenue.

It is unlawful for a school employer to enter into any agreement that would place it in a position of deficit financing due to a reduction in the employer's actual general fund revenue or an increase in the employer's expenditures when the expenditures exceed the employer's current year actual general fund revenue. A contract that provides for deficit financing is void to that extent, and an individual teacher's contract executed under the contract is void to that extent.

See IC 20-29-2-6 and IC 20-29-6-3 for more information.

Funding Estimates and Certifications

Pursuant to IC 20-29-6-12.5, prior to August 1st of the first year of a State budget biennium, the Indiana Department of Education will provide the parties with an estimate of the general fund revenue available for bargaining. Within 30 days after the first ADM count in the first year of a State budget biennium, the DOE will provide a certification of estimated general fund revenue. If a school corporation has received additional funding through an approved general fund operating referendum, the corporation must have the amount certified by the Indiana Department of Local Government Finance before formal bargaining.

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commences.

Regarding the financial basis of impasse determination, IC 20-29-6-12.5(b) provides that the Department of Education and Department of Local Government Finance certifications listed above will be the basis of impasse determinations; IC 20-29-8-?(f) provides that only general operating funds and those funds certified by the Department of Education and the Department

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**IEERB Practitioner's Guide to Bargaining &
Impasse 2013**

of Local Government Finance may be considered as a source of the funding for items during factfinding, unless the school funding formula allows other funds to be used for certain items.

See IC 20-29-6-12.5 and IC 20-29-8-7 for more information.

Conclusion

The law on teacher collective bargaining in Indiana changed in 2011. The new law brought many changes, including bargaining timelines and mandatory impasse procedures. IEERB encourages all practitioners to become familiar with the law and rules regarding collective bargaining, and to be prepared for- and take seriously- bargaining, mediation, and factfinding.

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**IEERB Practitioner's Guide to Bargaining &
Impasse 2013**

Bargaining and Impasse Glossary

Bargain Collectively- The performance of the mutual obligation of the school employer and the exclusive representative to meet at reasonable times to negotiate in good faith concerning the mandatory subjects of bargaining; and to execute a written contract, incorporating any agreement relating to the mandatory subjects of bargaining. The obligation to bargain collectively does not require the school employer or the exclusive representative to agree to a proposal of the other or to make a concession to the other. See IC 20-29-2-2; IC 20-29-6-1; IC 20-29-6-4; and IC 20-29-6-6.

Bargaining Unit- A group of school employees that the employer has recognized or IEERB has certified as appropriate to be represented by an employee organization for the purpose of collective bargaining. See IC 20-29-5-1; 560 IAC 2-2-1.

Collective Bargaining (mandatory subjects of)- Salary; wages; and salary and wage related fringe benefits, including accident, sickness, health, dental, vision, life, disability, retirement benefits, and paid time off as permitted to be bargained under IC 20-28-9-11. Salary and wages include the amounts of pay increases available to employees under the salary scale adopted under IC 20-28-9-1, but do not include the teacher evaluation procedures and criteria, or any components of the teacher evaluation plan, rubric, or tool. See IC 20-29-6-4.

Collective Bargaining Agreement- A written agreement encompassing all agreed-upon mandatory subjects of bargaining that has been ratified by the governing body of the school corporation and the exclusive representative. Once a CBA has been ratified, it must be sent to IEERB and posted on the school corporation's website. See IC 20-29-6; 560 IAC 2-5-1.

Committee Appointments- The percentage of teacher positions the exclusive representative may appoint to serve on a statutory or locally created school or district wide committee may not exceed the percentage of teachers in the school corporation who are members of the exclusive representative. This requirement does not apply to the bargaining team for the exclusive representative, and such a committee may not address subjects of bargaining. See IC 20-29-5-7.

Deficit Financing- Actual expenditures exceeding the employer's current year actual general fund revenue for a budget year. It is unlawful for a school employer to enter into any agreement that would place it in a position of deficit financing due to a reduction in the employer's actual general fund revenue or an increase in the

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employer's expenditures when the expenditures exceed the employer's current year actual general fund revenue. A contract that provides for deficit financing is void to that extent, and an individual teacher's contract executed under the contract is void to that extent. See IC 20-29-2-6 and IC 20-29-6-3.

Discussion- The performance of the mutual obligation of the school corporation through its superintendent and the exclusive representative to meet at reasonable times to

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**IEERB Practitioner's Guide to Bargaining &
Impasse 2013**

discuss, provide meaningful input, or exchange points of view, with respect to the following subjects: 1) curriculum development and revision; 2) textbook selection; 3) teaching methods; 4) hiring, evaluation, promotion, demotion, transfer, assignment, and retention of certificated employees; 5) student discipline; 6) expulsion or supervision of students; 7) pupil/teacher ratio; 8) class size or budget appropriations; 9) safety issues for students and employees in the workplace, except those items required to be kept confidential by state or federal law; and 10) hours. The obligation to discuss does not require either party to enter into a contract, agree to a proposal, or make a concession related to the mandatory subjects of discussion. See IC 20-29-2-7; IC 20-29-6-7; and IC 20-29-6-8.

Employee Rights- School employees may: form, join, or assist employee organizations; participate in collective bargaining with school employers through representatives of their own choosing; and engage in other activities, individually or in concert; to establish, maintain, or improve salaries, wages, salary and wage related fringe benefits, and other matters set forth in IC 20-29-6-4 and IC 20-29-6-5. Additionally, school employees may not be required to join or financially support a school employee organization through the payment of fair share fees, representation fees, professional fees, or other fees. See IC 20-29-4-1 and IC 20-29-4-2.

Employer responsibilities and authority- School employers have the responsibility and authority to manage and direct on behalf of the public the operations and activities of the school corporation to the full extent authorized by the law, including but not limited to the following: 1) direct the work of the school employer's employees; 2) establish policy through procedures established in IC 20-29-6-4 and IC 20-29-6-5; 3) hire, promote, demote, transfer, assign, and retain employees; 4) suspend or discharge employees in accordance with applicable law through procedures established under state law; 5) maintain the efficiency of school operations; 6) relieve employees from duties because of lack of work or other legitimate reason through procedures established in IC 20-29-6-4, IC 20-29-6-5, and IC 20-29-6-7; and 7) take actions necessary to carry out the mission of the public school as provided by law. See IC 20-29-4-3.

Exclusive Representative- The school employee organization that has been certified by IEERB, or voluntarily recognized by the school employer, to be the exclusive representative of the school employees in the appropriate bargaining unit, or persons authorized to act on the organization's behalf. See IC 20-29-2-9.

Expiration (of Collective Bargaining Agreement)- Collective bargaining agreements may not

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extend past the end of a state budget biennium. Upon the expiration of the current contract that is in effect, the school employer shall continue under the terms of the current contract that is in effect, with no increase or increment in salary, wages, or benefits for any bargaining unit employee until a new contract is executed, unless continuation would put the school employer in a position of

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**IEERB Practitioner's Guide to Bargaining &
Impasse 2013**

deficit financing due to a reduction in the employer's actual general fund revenue or an increase in an employer's expenditures when the expenditures exceed the current year actual general fund revenue. If an agreement has not been reached on the items to be bargained collectively by November 1, as provided in IC 6-1.1-17-5, the parties shall continue the terms of the current contract that is in effect, and the school employer may issue tentative individual contracts and prepare its budget on that basis. During this period, the school employer may not unilaterally change the terms or conditions of employment that are issues in dispute. Only certain parts of the contract must continue. See IC 20-29-6-4.7; IC 20-29-6-16.

Factfinder- The individual appointed by IEERB to conduct the factfinding process.

Factfinding- Mandatory impasse process that will provide a final solution when parties cannot timely settle their collective bargaining agreement on their own or with the help of mediation. The factfinder, appointed by IEERB, will conduct an investigation, which may include a public hearing, into the parties' Last, Best Offers. The factfinder must then select one party's LBO as the binding contract terms. The factfinder's order is restricted to only those items permitted to be bargained and included in the collective bargaining agreement. The order must not put the employer in a position of deficit financing and may not impose terms beyond those proposed by the parties in their LBOs. The factfinder shall consider the following factors: past memoranda of agreements and contracts between the parties; comparisons of wages and hours of the employees involved with wages of other employees working for other public agencies and private concerns doing comparable work, giving consideration to factors peculiar to the school corporation; the public interest; and the financial impact on the school corporation and whether any settlement will cause the school corporation to engage in deficit financing. The parties will split the cost. Factfinding may not last longer than 15 days. See IC 20-29-6-15.1; IC 20-29-8; 560 IAC 2-4.

Financial Consultant- The individual appointed by IEERB to aid the factfinder in the financial aspects of the factfinding process.

Impasse- When the parties are unable by themselves to timely settle and ratify a collective bargaining agreement. IEERB shall declare impasse after September 30 if either the parties notify IEERB of impasse, or the parties are, or are supposed to be under the terms of their CBA, in collective bargaining for all or part of a contract and have not submitted a ratified CBA

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to IEERB. See IC 20-29-6-13 and 560 IAC 2-4-1.

Last, Best Offer (LBO)- The contract terms a party would like to have as the parties' CBA, as well as supporting documents and information. If parties at impasse do not settle during mediation, they must exchange LBOs and send a copy to IEERB. The factfinder, appointed by IEERB, will conduct an investigation, which may include a public hearing, into the parties' LBO. The factfinder must then select one party's LBO as the binding contract terms. The factfinder's order is

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IEERB Practitioner's Guide to Bargaining & Impasse 2013

restricted to only those items permitted to be bargained and included in the collective bargaining agreement. The order must not put the employer in a position of deficit financing and may not impose terms beyond those proposed by the parties in their LBO. LBO requirements for any given year will be posted

on IEERB's website prior to October 1¹ and will be sent to parties upon declaration of impasse. See IC 20-29-6; IC 20-29-8; 560 IAC 2-4.

Mediation- An attempt by an impartial third party, called a mediator, to help school employers and their exclusive representatives settle disputes. Mediation is mandatory in impasse cases. In impasse cases, mediation will last up to 30 days, the cost will be split by the parties, and the mediation will result in either a ratified collective bargaining agreement or the exchange by the parties of their LBO. See IC 20-29- 6-13; 560 IAC 2-4-3; 560 IAC 2-4-3.1.

Mediator- An impartial third party who helps school employers and their exclusive representatives settle disputes.

Negotiator- An individual who represents the employer or exclusive representative in collective bargaining negotiations to reach an agreement. Often committees or "teams" represent each party, and one of the committee members acts as chief negotiator or spokesperson for the group.

Ratification- Formal approval of a newly negotiated collective bargaining agreement. Agreements reached through collective bargaining under IC 20-29 are binding as a contract only if ratified by the governing body of the school corporation and the exclusive representative. See IC 20-29-6-6.

School Corporation- A local public school corporation established under Indiana law. The term includes any: school city, school town, school township, consolidated school corporation, metropolitan school district, township school corporation, county school corporation, united school corporation, community school corporation, and public career and technical education center or school or school for children with disabilities established or maintained by two or more school corporations. See IC 20-29-2-12.

School Employee- A full-time certificated person in the employment of a school employer, but not including supervisors, confidential employees, employees performing security work, and noncertificated employees. A certificated employee means a person whose contract with the school corporation requires that the person hold

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a license or permit from the division of professional standards of the department of education under IC 20-28; or who is employed as a teacher by a charter school established under IC 20-24. See IC 20-29-2-4 and IC 20-29-2-13.

School Employee Organization- An organization that has school employees as members and one of its primary purposes is representing school employees in dealing with their school employer. See IC 20-29-2-14.

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**IEERB Practitioner's Guide to Bargaining &
Impasse 2013**

School Employer- The governing body of a school corporation or charter school established under IC 20-24, and a person or persons authorized to act for the governing body of the school employer in dealing with its employees. Governing body is defined as township trustee and the township board of a school township; a county board of education; a board of school commissioners; a metropolitan board of education; a board of trustees; any other board or commission charged by law with the responsibility of administering the affairs of a school corporation; or the body that administers a charter school established under IC 20-24. See IC 20-29- 2-10 and IC 20-29-2-15.

Scope (of bargaining)- The range of issues made bargainable by IC 20-29-6.

Term (of a CBA)- The dates a collective bargaining agreement is in effect. A CBA may not extend past the end of a state budget biennium. See IC 20-29-6-4.7(b).

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